action for damages. In this view of the case, it would appear to be an exception to the general current of authorities.

III. In the principal case, the declaration averred that the drain in question was negligently and unskilfully built, being entirely inadequate for the purpose designed. It was a temporary drain merely, and it appears not to have been denied, that it was of insufficient size to carry off the water from such storms as might be frequently expected to occur. It may, therefore, be regarded in one view as a negligent performance of duty by the corporation, who, though not bound to make a sewer there, were bound to make a good one if they made any at all. The case therefore would come within the class already noticed, where the corporation is liable, and this appears to have been the view taken by the judge who tried it in the court below. But the cardinal fact in the evidence, as reviewed by the Chief Justice in the Appellate Court, was, that the construction of the drain did not put the plaintiff in any worse position than he was in before it was made. On the contrary, though not a perfect protection, the drain was, nevertheless, a benefit so far as it operated at all, and therefore, unless the defendants would have been liable for not making any drain, they were not liable for making an insufficient one. If on a new trial, the fact should appear to be otherwise, the plaintiff might still recover without in any degree impeaching the rules of law so clearly and satisfactorily laid down by the Chief Justice in the foregoing opinion. J. T. M.

In Circuit Court of the United States, for the Northern District of Illinois.

NORTH-WESTERN IRON COMPANY *v.* JOHN W. HOPKINS *et al.*

A libel for review, filed after the term has passed at which the decree complained of was rendered, and after the same has been executed, will be entertained by a court of admiralty, when actual fraud is charged and the libellant is without fault and without remedy.

DAVIS, J.—This libel presents this question: Has a court of admiralty a right to entertain a libel for review after the term has passed, and after the decree has been executed?

The right is denied, and chiefly on the ground of a want of precedent. The authority of precedent is very strong, but not always conclusive. I can perceive no good reason why a court of admiralty, in a proper case, should not exercise the power of reviewing its own proceedings. It may be necessary for the proper administration of justice, and especially in cases where important rights are adjudicated without personal notice, which is permitted under our rules. The court would not entertain a libel on the grounds of mere oversight or neglect. But, where actual

fraud is charged, and the libellant is without fault and without remedy, it would be a denial of justice to dismiss it.

Lord STOWELL and Justices STORY and SPRAGUE all thought that there were cases in which libels for review should be retained, although conceding the absence of precedent.

Judge STORY said that "where, by after-acquired evidence, it was plain that the merits had not been considered, it was right to entertain a bill for review."

The remedy by libel for review, in the case before the court, is a proper one, and the demurrer is overruled.

The cases containing the opinions of Lord STOWELL and Justices STORY and SPRAGUE, referred to, are *The Fortitudo*, 2 Dods. 70; *The Steamboat New England*, 3 Sumner 506; and *Janvrin* v. *Smith*, Sprague's Decisions 13.

With these cases compare *The Monarch, Bell*, 1 Wm. Rob. 21; 2 Conk. Adm. (2d ed) 360–367; *The Martha*, 1 Blatch. & How. 171–175.

J. A. J.

District Court of the United States for the Northern District of New York. In Admiralty.

RICHARD WELLS COUNCER *v.* THE STEAM-TUG "A. L. GRIFFIN," &c.

A libel for the loss of a vessel on the Canadian shore of Niagara river, having been referred to a master, he reported that at the time of the loss the vessel *was worth* a certain sum of "*dollars in gold, or Canadian currency*," and that gold or Canadian currency was, at such time, at a premium of forty-nine per cent. over United States legal tender notes. *Held*, that the *value* being reported at a certain sum in foreign currency, the *damages* were to be estimated at the value of that sum in United States notes, and the use of the word "gold" in connection with Canadian currency did not require any different rule than would have been applied had the value been stated in the foreign currency only.

THIS suit was brought to recover the damages sustained by the libellant in the loss of the scow "Andrew Murray," on the Niagara river, at the mouth of Chippewa creek, in Canada West, on the 14th day of December 1863.

After the hearing, upon pleadings and proofs, an interlocutory decree was made, referring it to a commissioner "to take the